IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2308 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAFIQBHAI @ RAFIYUDIN KUTBUDINSHAIKH

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 2308 of 2005

MS SN QURESHI for Petitioner No. 1

MR IM PANDYA, AGP for Respondent No. 1-3

M IA SHAIKH for Respondent No. 4

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/04/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by the District Magistrate, Ahmedabad on 27th January, 2005 in exercise of powers conferred upon him vide Sub-Section (2)(a) of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (PBM Act for short). The petitioner is under detention in pursuance of the said order from 6th January, 2005.

2. Learned advocate tenders original acknowledgment of the representation made by the detenu's daughter to the detaining authority, which the detaining authority received on 9th February, 2005. The said postal acknowledgment is taken on record and considered.

3. The grounds of detention as placed on record reveal that the petitioner happens to be a Chairman of Rachna Grahak Sahakari Bhandar, who runs the fair price shop and was issued a licence from the State Government as well as an agreement for running of the said shop was also entered into by the petitioner. During 11th August, 2004 to 31st August, 2004, officers of Supply Department of the State Government, inspected and checked the fair price shop of the petitioner and found some illegality and irregularity. It was found that the petitioner, after preparing duplicate bills, disposed of 257 liters of kerosene illegally from the quota of kerosene allotted to him for the month of May, June and July, 2004. The petitioner disposed of 470 liters of kerosene, after preparing false bills from the quota allotted to him for the month of May, June, July, 2004 in a manner that though the said quota was not distributed amongst the card holders, but false bills were prepared in this respect and no entries were made in the ration cards. Under the scheme DBC/SBS, the petitioner disposed of illegally 72 liters of kerosene from the quota of kerosene for the month of May, June and July, 2004. The bills were prepared in the name of bogus card holders and during these three months i.e. May, June and July, 2004, it was found that the petitioner disposed of 130 liters of kerosene in this manner. The ration card holders of other shops were sold kerosene and, thereby the petitioner disposed of 240 liters of kerosene illegally. Some of the card holders did not avail the quota of kerosene and the petitioner disposed of such quota to the extent of 996 liters of kerosene during those three months. As per further allegations, it was found that the distribution of the kerosene was less than scheduled instruction. The State Government has set up a system for distribution of kerosene to lower and middle income commune for house hold purpose and for that the Government has subsidized rates of kerosene. The white

kerosene for industrial purpose is available in open market with higher price. It was found that the petitioner acted in breach of the agreement as well as control orders and standing orders framed under the Essential Commodities Act, 1955. The detaining authority found that the petitioner was indulged in the activities of black marketing prejudicial to the maintenance of supplies of commodities essential to the community. In view of the detaining authority though a prosecution was filed against the petitioner for the breach of Sections 3 and 7 of the Essential Commodities Act, 1955 and though the licence issued to the petitioner was suspended for 90 days, but in view of detaining authority, such steps were insufficient to prevent the above said prejudicial activities of the petitioner. The detaining authority, therefore, reached to the subjective satisfaction that there was no other alternative except to pass an order of detention of the petitioner under the PBM Act. The detaining authority passed an order of detention of the petitioner, as aforesaid, which is under challenge in this Special Civil Application.

4. Learned advocate Ms.Sahin Quareshi for the petitioner, learned AGP Mr.I.M.Pandya for the respondents No.1 to 3 and learned Standing Counsel for the Central Government Mr.M.I.A.Shaikh for the respondent No.4 were heard at length. The affidavit-in-reply as filed by the detaining authority, affidavit-in-reply as filed by Mr.H.C.Kapadia, Deputy Secretary of the Government of Gujarat, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar and affidavit-in-reply filed by Mr.A.K.Ganguly, under Secretary in the Department of Consumer Affairs, Food and Public Distribution, New Delhi, were also taken into consideration.

5. The various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP and learned Standing Counsel for the Central Government, it appears that this petition can be examined and disposed of on the sole issue as to whether the detenu's right to make effective representation is infringed.

6. It is not in dispute that the order of detention came to be confirmed by the State Government on 7th February, 2005. It is also not in dispute that detenu's daughter preferred the representation to the State Government as well as to the detaining authority on 7th February, 2005. The detaining authority, admittedly, received such representation on 9th February, 2005. The

detaining authority, in turn, forwarded the said representation on 15th February, 2005 to the Central Government for further consideration. The Central Government received the said representation on 17th February, 2005 and was dealt with properly. The question which arises is whether delay caused between 9th February, 2005 to 15th February, 2005 in forwarding the representation by the detaining authority to the competent authority, whether infringes the detenu's right to make effective representation under Article 22(5) of the Constitution of India. The representation made by the detenu must be dealt with as expeditiously as possible without delay of a day. We do not find proper explanation of this delay from the affidavit-in-reply filed by the detaining authority, though the learned AGP Mr.Pandya urged that in detention order, itself, it is made clear that how the representation is to be made by the detenu and in what performa. Mr.Pandya contended that the cause of delay in forwarding representation can only be attributed to the fact that the representation preferred by the detenu's daughter was not in performa and, therefore, could not be located properly by the department.

7. True it is that the representation with formatic contents can easily be located, but no such performa is a statutory requirement. Further a copy of the representation preferred by the detenu's daughter placed on record distinctly, on face of it, makes it clear that for what purpose and for which details, the letter was addressed to the detaining authority. This situation is to be weighed with the right of detenu as enshrined by Article 22(5) of the Constitution of India and, therefore, the delay caused in forwarding representation to the competent authority in between 9th February, 2005 to 15th February, 2005 remain unexplained and adversely affecting the right of the detenu to make effective representation. Therefore, further detention of the petitioner is bad in law on this ground alone. The order under challenge, therefore, is required to be quashed and set aside.

8. In the result, the petition is allowed. The order passed by the District Magistrate, Ahmedabad on 27th January, 2005, against the petitioner in exercise of powers under Sub Section (2)(a) of Section 3 of the PBM Act is hereby quashed and set aside. The detenu Rafiqbhai @ Rafyudin Kutbudin Shaikh is hereby ordered to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)